IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 143 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

At the instance of the revenue, under sec. 256(1) of the Income-tax Act, 1961, the following question of law has been referred for our opinion :

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to development rebate on the expenditure of Rs. 23,26,965/- being the increased liability due to fluctuations in the rates of currency?"

2. The learned counsel for the assessee brings to our notice the provisions of sub-sec. (2) of sec. 43A, which, according to him, clearly covers the controversy with regard to development rebate on expenditure arising due to fluctuations in the rates of currency.

3. The question raised has been squarely answered against the assessee in the case of CIT v. Arvind Mills Ltd. 1992 (193) ITR 255, which was followed in the case of the same assessee for the earlier assessment years in the decision reported in 1999(236) ITR 218, CIT v. Gujarat State Fertilizers Co. Ltd. The Supreme Court as well as this Court have held that in the face of clear provisions contained in sec. 43A(2) of the Act, the assessee cannot be held entitled to development rebate in respect of increase in the cost of the assets on account of realignment of currency.

4. Consequently, the question referred is answered in favour of the department and against the assessee.

The reference stands disposed. There shall be no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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